

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DONALD C.

Claimant

OAH No. 2006050830

vs.

NORTH BAY REGIONAL CENTER

Service Agency.

DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter in Napa, California on June 20, 2006.

Nancy Ryan, Attorney at Law, represented the service agency North Bay Regional Center (NBRC).

Claimant Donald C. was represented by his mother Stacy C. Claimant Donald C. was present at the hearing.

The matter was submitted on June 20, 2006.

ISSUE

Whether NBRC should be required to fund transportation between claimant's home and a day program at a cost of \$100 per day, five days per week.

FACTUAL FINDINGS

1. Donald C. (claimant) is 21 years old. He is eligible for regional center services based on a diagnosis of cerebral palsy and mild mental retardation. Claimant is non-ambulatory, and is confined to a wheelchair. His ability to communicate is limited.

Claimant lives with his mother, grandmother and younger sister in Vallejo, California. Claimant's family moved to Vallejo, which is in the North Bay Regional Center service area, in

February 2006. Prior to that time they lived Dunsmuir, which is in the Far Northern Regional Center service area.

2. Claimant is a very vibrant, social person who is interested in learning. He particularly enjoys participating and communicating with others. Claimant needs social stimulation and human interaction or he becomes depressed and reverts (i.e., loses certain skills). Attendance at a day program is very important to claimant's well being because it provides human interaction, social stimulation, and an opportunity to learn.

Claimant does not tolerate being "out of program" well. Both claimant's mother and grandmother testified that when claimant is attending a day program he is happy and well adjusted. When he unable to attend a day program his behavior deteriorates and he screams, has violent outbursts, throws tantrums, bites himself and hits others. Sometimes he must take medication for depression.

3. Upon moving to Vallejo, claimant started attending the day program at PACE Georgia in Vallejo. His first day at PACE Georgia was February 1, 2006. Initially claimant seemed to like the program, but problems soon developed. On one occasion claimant got a nosebleed while at PACE Georgia. The nosebleed lasted 15 to 20 minutes. Claimant's mother was called. She was advised that PACE Georgia was suspending claimant from the program until she obtained a physician's clearance and a plan was put in place to address any similar incidents in the future. Claimant was out of program a week as a result of the suspension.

4. Staff at PACE Georgia also routinely complained that claimant was driving his electric wheelchair too fast at the facility and that he was doing so deliberately. Claimant's mother showed staff how to adjust the speed controls and attempted to work with staff to correct the problem, but the complaints continued. On March 22, 2006, as claimant was leaving a classroom, he ran into another PACE Georgia program participant who was attempting to enter the room and knocked her down. Claimant had previously run into a wall in his electric wheelchair.

Claimant's mother advised PACE Georgia that she would send claimant to the day program in a manual wheelchair, but that it would take a couple of weeks because she would have to get the foot plates for the chair from her former residence in Dunsmuir. PACE Georgia initially agreed to this plan, but then told claimant's mother that claimant could not come in a manual wheelchair because licensing considered it a form of restraint.

Shortly thereafter claimant came home crying and said he did not want to go back to "school" (PACE Georgia). Due to his disability he was unable to explain why. Claimant's mother questioned staff and was told that claimant had knocked over a chair. She still is not clear what happened. This was the first time claimant had ever indicated that he did not want to go to school. The next day PACE Georgia told claimant's mother that he was being suspended indefinitely because he was not complying with the rules. She was also told that PACE Georgia

was going to reevaluate whether claimant was appropriate for their program. Claimant's mother was very upset by claimant's suspension from PACE Georgia, and the fact that he was subject to reevaluation, which suggested to her that they could not meet his needs.

5. Claimant's Client Program Coordinator George Bleasdale arranged a meeting between claimant's mother and PACE Georgia, which was held on April 5, 2006. PACE Georgia program manager Keisha McCray explained that claimant's suspension was temporary and would remain in effect until a plan (1:1 supervision and a case plan that met Community Care Licensing requirements for the day program to have claimant in a manual wheelchair, which was perceived as a form of restraint) was in place. The meeting was not successful and claimant did not return to the PACE Georgia program. The PACE Georgia termination report indicates that claimant is eligible for readmission, but that he "would need to be assessed by the occupational therapist and behavior specialist prior to returning. He would also require a plan for the use of his electric wheelchair to prevent safety issues." Claimant has been out of program since the end of March 2006.

6. Following claimant's suspension from PACE Georgia, claimant's mother felt she had no option but to look at other programs. She contacted Bleasdale, who provided her with the name of several programs, including Napa Valley Support Services (NVSS) in Napa, California. Claimant applied to and was accepted to NVSS. However, it was determined that NVSS was not a viable option because it would require a two hour commute each way. Bleasdale then told claimant's mother to contact Dungarvin in Vacaville, California. Claimant and his mother visited the program and both liked it. Claimant successfully completed the application process and was accepted into the Dungarvin day program. However, Dungarvin does not provide transportation to Vallejo.

7. Bleasdale contacted Transportation Connection, the NBRC transportation vendor. Transportation Connection is familiar with all consumer routes, as well as when and where consumers are being transported. Transportation Connection advised that there were no vans available to transport claimant to Vacaville because of the van space needed to accommodate his wheelchair. However, it indicated that it was able to make an arrangement with North Bay Transit Group to provide the transportation to and from Dungarvin at a cost of \$100 per day.

8. The typical cost to NBRC to transport consumers to and from day programs is \$15 to \$25 per day. Because of the high cost to transport claimant to and from Dungarvin, the request to fund had to be submitted for Program Assessment and Review of Extraordinary Requests for Purchase of Service. The Program Assessment and Review Team (PART) denied the request based on its findings that there were alternative, less costly programs closer to home that could meet claimant's needs and that travel time to Dungarvin required claimant to be in the van too long.¹

¹ NBRC provided evidence that its standard policy is to avoid transporting clients to programs that require them to travel for longer than 1 hour each way due to physical issues, such as pressure sores, toileting and behavior control.

9. The amendment to claimant's Individual Program Plan (IPP) dated December 15, 2005, provides as Objective number 3: "Donald will attend a day program up to five days per week." The reason given for the objective was: "Donald has just exited his educational program, his family has just relocated to Vallejo, and he and his parent have requested that he attend a day program."

The plan for implementation of the objective included the following:

FNRC (Far North Regional Center) will fund attendance at PACE-Georgia/Oasis at a 1 to 4 staffing ratio at \$67.20 per day or current vendor rate, beginning 1/23/06. FNRC will fund supplementary staff . . . up to two hours per day five days per week at a cost of \$8.50 per hour. . .

Transportation will be provided by PACE-Solano and funded by FNRC at contract rate or the current vendor rate, beginning 1/23/06. . . .

10. Claimant is dissatisfied with the services provided by PACE Georgia and questions its ability to meet his needs given his prior suspensions. Claimant now desires to attend Dungarvin and wants NBRC to fund the cost of both the program and transportation to and from the program. NBRC acknowledges that it has an obligation to continue the services specified in claimant's IPP, including providing a day program and transportation to and from the program. However, NBRC takes the position that it is required to utilize the most cost-effective means of providing services to respondent. NBRC estimates the combined cost of the Dungarvin program plus transportation at \$4,000 per month. It contends there are other less costly options available to meet claimant's needs. For example, Claimant can return to PACE Georgia. If claimant returns to PACE Georgia, NBRC will supply a 1:1 aide, help complete the case plan governing claimant's wheelchair usage, facilitate claimant's interaction with staff and provide transportation to and from the program. Alternatively, NBRC can pay claimant's mother a flat fee plus mileage to transport him to and from Dungarvin, or claimant can attend a different PACE or other day program in or nearer to Vallejo. NBRC argues that it should be given the opportunity to develop a more cost effective service.

11. Claimant's mother testified that she has contacted all of the Vallejo day programs and other day programs recommended to her by NBRC, except PACE Suisun. When she explained claimant's disability, she was repeatedly told the programs could not meet claimant's needs.² PACE Georgia was the only Vallejo program that seemed able, at least initially, to meet

² PACE Benecia told her the majority of their clients had Downs syndrome and that its program probably was not appropriate for claimant. It referred her to PACE Alabama, which similarly felt it could not meet claimant's needs. PACE Alabama referred claimant's mother to PACE Georgia. Claimant and his mother visited the PACE Georgia, liked the program and enrolled. Claimant's mother also contacted Solano

claimant's needs. After claimant was suspended from PACE Georgia, claimant's mother contacted NVSS and Dungarvin upon Bleasdale's recommendation. She feels both programs can meet claimant's needs. She does not feel that any of the Vallejo day programs or other PACE programs she contacted are appropriate to meet claimant's needs. Nor is paying claimant's mother to transport claimant to and from his day program a viable option. She has another child that she must take to school each day, and at the end of August she is scheduled to begin school to become a phlebotomist. Getting claimant back into a day program as soon as possible is vital to claimant's emotional well being and to the well being of his mother, who has been unable to work since he has been out of program.

LEGAL CONCLUSIONS

1. Under the Lanterman Act (Welf. & Inst. Code, § 4500 et seq.),³ the State of California accepts responsibility for persons with developmental disabilities (§ 4501) and pays for the majority of their "treatment and habilitation services and supports" in order to enable such persons to live in the least restrictive environment possible (§ 4502, subd. (a)). The State agency charged with implementing the Lanterman Act is the Department of Developmental Services (DDS). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with access to the services and supports best suited to them throughout their lifetime. (§ 4620.)

2. In order to determine how an individual client is to be served, regional centers are directed to conduct a planning process that results in an individual program plan (IPP) designed to promote community integration, and as independent, productive and normal life as possible. (§§ 4646, subd. (a) and 4502, subd. (a).); *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 389.) The IPP is developed by an interdisciplinary team and must include participation by the client and/or his or her representative. Among other things, the IPP must set forth goals and objectives for the client, contain provisions for the acquisition of services (which must be provided based upon the client's developmental needs) and reflect the client's particular desires and preferences. (§ 4646; § 4646.5, subds. (a)(1), (a)(2) and (a)(4); § 4512, subd. (b); § 4648, subd. (a)(6)(E).) Services that may be provided pursuant to the IPP include, but are not limited to, community integration services, social skills training and transportation services necessary to ensure delivery of services to persons with developmental disabilities. (§ 4512, subd. (b).) Regional centers are

Diversified Services (SDS) which told her its program was for individuals with severe behavior problems (which claimant does not have) and that it did not have a van to transport individuals in wheelchairs on community outings. Claimant and his mother visited the Milestones program and observed that the level of disability of most clients was much more severe than that of claimant. Claimant became frightened and wanted to leave. Vine Gardens told claimant's mother that they were unable to take him. She also contacted ARC Solano and Pride Industries, neither of which she felt was appropriate for claimant.

³ All citations are to the Welfare and Institutions Code unless otherwise indicated.

obligated to coordinate those services and supports necessary to implement a consumer's IPP. (§ 4647, subd. (a).)

3. Although regional centers are mandated to provide a wide range of services to facilitate implementation of the IPP, they must do so in a cost-effective manner. (§ 4640.7, subd. (b); § 4646, subd. (a).) When selecting a provider of consumer services and supports, the regional center must consider, "the cost of providing services or supports of comparable quality by different providers, if available." (§ 4648, subd. (a)(6)(D).) However, if a service specified in a client's IPP is not provided by a generic agency the regional center must fill the gap (i.e., fund the service) in order to meet the goals set forth in the IPP. (§ 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services*, *supra*, 38 Cal.3d at p. 390.)

4. When a consumer moves from an area served by one regional center to an area served by a different regional center, he or she is entitled to a continuation of the services specified in his or her IPP. If the services the consumer was receiving do not exist in the new location, the regional center in the new location must convene a meeting to develop a new IPP within 30 days. While the new IPP is being developed, the new regional center must provide alternate services. (§ 4643.5, subd. (c).)

5. Pursuant to subdivision (c) of section 4643.5, a consumer who is transferring from one service area to another has a right to have the services specified in his or her IPP continued. Claimant's IPP specifies that he is entitled to participate in a day program up to five days a week, and that the regional center will fund the program and transportation for the program. Claimant's IPP does not specify that he is entitled to attend the day program of his choice regardless of cost. Rather, provision of the services specified in claimant's IPP is subject to the requirements of the Lanterman Act, which mandates that NBRC coordinate those services and supports necessary to implement a claimant's IPP and that it do so in a cost-effective manner. It is unfortunate that NBRC referred claimant to day programs that it subsequently proved unwilling to fund. It is also unfortunate that claimant has been out of program so long. However, neither of these unfortunate occurrences justifies an inefficient use of public funds. It is therefore determined that NBRC should be given an opportunity to develop a cost-effective alternative to the Dungarvin program. However, given the hardship already occasioned to claimant and his family by delays in placing claimant in a new day program, it is determined that NBRC should be required to find an alternative placement and/or transportation option within 30 days, while taking into account the needs and preferences of claimant and his family. An interdisciplinary team meeting should be held as soon as possible to discuss options and claimant's preferences, and hopefully to reach an agreement. If NBRC is unable to secure an appropriate placement within 30 days, claimant can request a new hearing on whether funding of the Dungarvin program and transportation to and from the program is appropriate.

ORDER

1. An Interdisciplinary Team meeting shall be convened at the earliest possible date, but no later than fourteen (14) days from the date of this decision, to discuss day program options for claimant. The parties may also discuss any other topic necessary to expeditious implementation of claimant's IPP upon agreement of the parties.

2. NBRC shall make every reasonable effort to place claimant in a day program appropriate to his needs within thirty (30) days of the date of this decision. NBRC shall take into account the needs and preferences of claimant and his family in providing a day program for claimant.

3. If NBRC fails to find a suitable day program for claimant within thirty (30) days of the date of this decision, claimant may file a new fair hearing requesting seeking review of whether funding of the Dungarvin program and transportation to and from the program is appropriate.

It is worth noting that the NBRC and claimant's mother have an ongoing relationship. The purpose of that relationship is to secure those services most beneficial to claimant. All members of the interdisciplinary team are therefore encouraged to cooperate and work in good faith toward achieving the goals and objectives of claimant's IPP and to minimize conduct that would result in a delay of claimant's receipt of services.

DATED: _____

CHERYL R. TOMPKIN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is a final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.